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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 773

JACK ESCOE,

Petitioner,

vs.

FRED G. ZERBST, Warden of the United States Penitentiary at Leavenworth, Kansas.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, TENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

Jack Escoe,
Petitioner, Pro se.

INDEX.

Subject Index.

	Page
Petition for writ of certiorari and brief in support	1
Statement of facts	2
Question presented	3
Summary of argument	4
Argument	4
Prayer for writ	20
Affidavit of petitioner	20

Table of Cases Cited.

Alverez v. State, 50 Fla. 24, 39 So. 481	10
Cantwell v. Missouri, 199 U. S. 602, 26 Sup. Ct. 749	15
Craig v. Hecht, 260 U. S. 714, 43 Sup. Ct. 90, 263 U. S. 255, 44 Sup. Ct. 103	10
Great Northern Ry. Co. v. United States, 155 Fed. 945, 84 C. C. A. 93, 208 U. S. 452, 28 Sup. Ct. 313	15
Hollandsworth v. United States, 34 F. (2d) 423	14
Joyce, People ex rel., v. Strassheim, 242 Ill. 359, 90 N. E. 118	11
Lucero, Ex parte, 168 Pac. 713	8
Mikell, Ex parte, 253 Fed. 817	19
N. Y. v. Kriegel, 207 N. Y. Sup. 646	12
O'Conner, State ex rel., v. Wolfer, 53 Minn. 135, 54 N. W. 1065, 19 L. R. A. 783	9
Smith v. St. Louis Ry. Co., 181 U. S. 248, 21 Sup. Ct. 603	15
State v. Horne, 52 Fla. 125, 42 So. 388	11
State v. Phillips, 185 N. C. 514, 115 S. E. 893	8
State v. Zolantakis, 259 Pac. 1044	6
Stumpf, People ex rel., v. Craig, 140 N. Y. Sup. 652	11
United States v. Allen, 179 Fed. 13, 103 C. C. A. 1	15
United States v. Harden, 10 Fed. 802	19
Young, Ex parte, 209 U. S. 123, 28 Sup. Ct. 441	15
Yow v. United States, 208 U. S. 8, 28 Sup. Ct. 201	19
Zeigler v. Railroad Co., 58 Ala. 599	6

Other Authorities Cited.

Act of July 20, 1892 (28 Stat. 252), as amended June 27, 1922 (24 Stat. 666)	..
United States Constitution, Fifth Amendment	4, 6, 15
United States Criminal Code, Title 18, Sec. 725, as amended	4, 12, 13, 16
United States Code, Title 25, Sec. 451	19
Petition of Right, 2 Car. 1 (1627)	5
Magna Carta, C. 29	5
Co. Litt. 183	15
2d Inst. 48	5
I. Bl. Comm. 130	6
IV. Bl. Comm. 257	5
IV. Bl. Comm. 283	5
III. Bl. Comm. 430	15

not an attempt to escape condign punishment through legal technicality, but is rather a *bona fide* effort to test whether or not he may be imprisoned in a summary proceeding without having been afforded an opportunity to prove his innocence of the charge upon which said imprisonment is ostensibly based.

Statement of Facts.

On or about January 28, 1932, petitioner was arrested in Marshall, Texas, by State officers, for allegedly having violated the National Motor Vehicle Theft Act. He was arraigned before the United States Commissioner at Tyler, Texas, on or about February 2, 1932, and pleaded not guilty. Bail was set at $2,000, and in default thereof he was remanded to jail.

About one week later he was admitted to bail of $1,000 on February 15, 1932.

On October 4, 1932, petitioner was indicted at Tyler, Texas, for conspiracy to violate the National Motor Vehicle Theft Act, to which he pleaded guilty the succeeding day. Sentence of eighteen months' confinement in the United States penitentiary at Leavenworth, Kansas, was passed immediately and petitioner placed in the custody of the United States Marshal at Tyler to await transportation to said penitentiary.

Later the same day petitioner was called back before the court and sentence withdrawn. Thereafter, to wit, October 10, 1932 he was called back before the court again and sentenced to four years and six months confinement in the United States penitentiary at Leavenworth, Kansas, and the execution thereof suspended for five years on condition of probation to Oscar S. Gresham, Probation Officer, Tyler, Texas.

Petitioner complied with every condition of his probation and remained at liberty until July 28, 1933, when he was

arrested by State officers and placed in the county jail at Marshall, Texas, where he was held incommunicado for about eight days in spite of repeated efforts to learn the reason of his arrest and to employ counsel for the same purpose. He was then taken to the county jail at Paris, Texas. His attempts to learn the reason for his arrest and transportation again proved unavailing. He succeeded, however, in contacting an attorney who sought by telegraph and telephone to learn from Oscar Gresham or Judge Randolph Bryant why petitioner was being held.

Before the attorney's efforts bore fruit, petitioner's probation was revoked on August 5, 1933. On August 11, 1933, he was taken direct to the penitentiary at Leavenworth, Kansas, from the jail at Paris, Texas, without having been brought before the court and having heard wherein he was alleged to have violated his probation or having had an opportunity to repel such allegation, which he could have done, as petitioner *did not violate his probation.*

Petitioner filed a petition for a writ of habeas corpus in the United States District Court for the District of Kansas, First Division, on December 1, 1933. Hearing was had on said petition January 26, 1934, and said petition was dismissed, to which ruling of the court your petitioner duly excepted, and which exception was allowed. Appeal was taken to the Circuit Court of Appeals for the Tenth Judicial Circuit, which sustained the District Court and on February 12, 1935, overruled appellant's (your petitioner's) motion for a rehearing.

Statement of Question.

This petition seeks the determination by this Honorable Court of the answer to the following question:

Can a probation be revoked without bringing the probationer before the court and affording him an opportunity to be heard?

Summary of Argument.

I.

Revocation of probation without giving the probationer an opportunity to show that he has not violated his probation is not due process of law.

II.

Sec. 725, Title 18, United States Code, requires that the probationer be brought before the court prior to revocation of his probation.

III.

Since petitioner was neither brought before the court nor given an opportunity to be heard in his behalf, he is now illegally restrained of his liberty.

IV.

Habeas corpus is a proper remedy to test the validity of his detention in the premises, for the court was without active jurisdiction to issue the order of revocation or mittimus.

V.

Petitioner should be discharged from further confinement.

Brief and Argument.

One.

Article V of amendment to the Constitution of the United States sets out that no person shall "be deprived of life, liberty or property without due process of law."

It is submitted that an order of a Federal court, issued *ex parte*, with the person upon whom said order is to

operate held incommunicado miles away in a jail, without his knowledge or consent, and based upon a false assumption which he could repel if present, is not "due process of law" as that expression is used in the organic law.

The earliest reference to the right which the amendment intended to secure which is found in the books is that statement of the rule formulated by Seneca:

> "*Qui statuit aliquid, parte inaudita altera, aequum licet statuerit, haud aequus fuit.*"

He who prefers a charge against another, however just it may be, will himself be unjust, unless the accused be heard in his own defense. Blackstone characterizes the rule as follows: "A rule to which all municipal laws that are founded upon the principles of justice have strictly conformed." IV Bl. Com. 283. He elsewhere (IV Bl. Com. 257) states: "* * * though it is just to compel suspected persons to give security to the public against misbehavior that is apprehended, yet it would be hard, upon such *suspicion*, without the proof of any actual crime, to punish them by a forfeiture of their recognizance."

Sir Edward Coke states that the words "*aliquo modo destruatur*", in C. 29 of Magna Carta, extend not only to killing or maiming, but also to every oppression under color of legal authority. 2 Inst. 48.

The Petition of Right, 2 Car. I (1627), declares that no freeman shall be imprisoned or detained without cause shown, to which he may make answer according to law.

Blackstone says: "To bereave a man of life, or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism as must at once convey the alarm of tyranny throughout the whole Kingdom. But confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore a

more dangerous engine of arbitrary government." 1 Bl. Com. 136.

All of the foregoing statements show that the phrase "*per legem terrae*" of Magna Carta, from which our expression "due process of law" is derived, was understood to require that in any proceeding a party adversely interested was entitled to an opportunity to be heard in his own behalf to have his day in court when the amendment in which the expression occurs was adopted.

The rule is well stated in *Zeigler* v. *Railroad Co.*, 58 Ala. 599:

> "Due process implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him this is not 'due process of law.'"

In the instant case it was conclusively presumed that petitioner had violated his probation. Petitioner could have rebutted this presumption and failure to allow him opportunity to do so constituted a violation of the Fifth Amendment.

The general rule in nearly every jurisdiction wherein this question has been raised seems to be that a convicted defendant released under a suspended sentence is entitled to notice and a hearing on the issue of whether he has broken the conditions of the suspension of sentence, before the suspension may be revoked. In *State* v. *Zolantakis*, 259 Pac. 1044, the Supreme Court of Utah held that a convict having been granted a suspension of sentence during good behavior, without any limitations, is entitled to hearing, in accordance with well recognized and established rules

of judicial procedure, on the question whether he has complied with the conditions imposed, before revocation of his suspended sentence.

The court says in part:

"The purpose of the law permitting the suspension of sentence is clearly reformatory. If those who are to be reformed cannot implicitly rely upon promises or orders contained in the suspension of sentence, then we may well expect the law to fail in its purpose. The reformation can certainly best be accomplished by fair, consistent and straightforward treatment of the person sought to be reformed. It would therefore seem, both from authority and principle, that when a sentence is suspended during good behavior, without any reservations, the person whose sentence is thus suspended has a vested right to rely thereon so long as such condition is complied with. The right to personal liberty is one of the most sacred and valuable rights of a citizen, and shall not be regarded lightly. The right to personal liberty may be as valuable to one convicted of crime as to one not so inflicted, and so long as one complies with the conditions upon which such right is assured by judicial declaration, he may not be deprived of the same. Such right may not be alternatively granted and denied without just cause."

"The majority of this Court are of the opinion that a person who has a sentence suspended during good behavior, without any limitation, is entitled to a hearing upon the question of whether or not he has complied with the conditions imposed; that such hearing must be according to some well recognized and established rules of judicial procedure; that defendant is entitled to have filed either an affidavit, motion or other written pleading setting forth the facts relied upon for a revocation of the suspension of sentence; that the defendant should be given an opportunity to answer or plead to the charge made; that a hearing should be had upon the issues joined; and that the defendant as well as the State be given the right of cross-examination.

> If we are correct in our conclusion that the defendant has a vested right to his personal liberty during good behavior when so ordered without reservation in the original sentence, any proceeding failing in these essentials is error."

Again, in *Ex parte Lucero*, 168 Pac. 713, the Supreme Court of New Mexico held that a prisoner was entitled to notice and a hearing on the issue of whether he had violated the terms of a suspended sentence, before it was declared revoked. The court said:

> "It appears that the proceedings leading to the issuance of the commitment against the petitioner were entirely *ex parte*. So far it appears from the record he was not present in person, or by counsel, and had no hearing as to whether he had breached the condition. * * * *Upon principle it would seem that due process of law would require an opportunity to be heard and notice, before the defendant can be committed under suspended sentence.* The suspension of the execution of the sentence gives to the defendant a valuable right. It gives to him the right of personal liberty, which is one of the highest rights of citizenship. This right cannot be taken from him without notice and opportunity to be heard, without invading his constitutional rights."

In *State* v. *Phillips*, 185 N. C. 514, 115 S. E. 898, it was held that a convict, having been given a suspended sentence on the condition that he abstain from drink, was entitled to a notice and hearing to inquire into an alleged violation of the condition, before being sentenced to imprisonment at hard labor. The court, in support of its decision in this case said:

> "If the defendant was sentenced upon his plea of guilty, and the judgment was suspended, or its immediate execution withheld, on a condition, and the State alleged a violation of that condition, and asked for

> the enforcement of the sentence because of the violation of the condition upon which it was based, the judge should have required the defendant to appear before him, by notice or by capias, if necessary, and inquired into the allegation of the State, and, if found to be true by him, he should have enforced the judgment, or taken such other course as his finding may have justified. But he clearly had no power, or jurisdiction, to leave this important and essential judicial prerequisite to be ascertained or found by a clerk of the court, or a sheriff, and thereupon to order the imprisonment of the defendant with hard labor upon the roads of any designated county."

It is true that where the statute provides that the parole power to be exercised by the court is entirely discretionary, or where the statute makes an express reservation of the power to revoke, no judicial proceeding would be necessary to terminate a suspension of sentence, but in the case at bar there is no such provision in the statute, and the case must be therefore within the class of cases which are considered in the absence of statute.

The case of *State, ex rel. O'Connor* v. *Wolfer*, 53 Min. 135, 54 N. W. 1065, 19 L. R. A. 783, was a case in which a convict who had been sentenced to life imprisonment was pardoned on the express condition that he take up his residence outside of the State during the balance of his life. Later, on being found within the State, he was arrested and remanded to serve out his sentence. The court, in support of the view that a hearing was necessary, said:

> "The main question, and the one which presents itself at the threshold of this case, is whether a person who has been discharged on a conditional pardon can be recommitted to the State prison without any hearing or adjudication, upon the mere order of the Governor, who has assumed to determine *ex parte* that the condition of the pardon has not been performed. It seems to us that such a sentence is war-

ranted neither by law nor by a just regard for the personal liberty of the citizen. It is, of course, well settled that if a person be pardoned upon a condition, either precedent or subsequent, which he neglects to perform, the pardon is void, and he may be remanded to suffer his original sentence; but upon the question whether he has neglected to perform the condition, and is therefore liable to be thus remanded, he is entitled to a hearing and adjudication. * * * but the pardon in this case contained no such condition, and our statute is entirely silent as to the mode of procedure. The procedure, therefore, in such cases, is governed by the rules of the common law."

In *Mercer* v. *State*, 50 Fla. 24, 39 So. 481, a convict had been pardoned from a life sentence on condition that he "thereafter lead a sober, peaceful and law abiding life, failing in which the sheriff of any county is to arrest him and return him to the State's prison to complete the sentence so imposed." The board of pardons revoked his parole and issued an order for his rearrest and imprisonment. On a petition for a writ of habeas corpus, the prisoner complained that his conditional pardon had been revoked without due notice and hearing. The court, in holding that the convict was entitled to a hearing before his pardon was declared revoked, said:

"The established practice of the common law and in the American States, *in the absence of statutory regulation, and in the absence from the pardon itself of express stipulations for that purpose*, is for some court of general criminal jurisdiction, upon having its attention called, by affidavit or otherwise, to the fact that a pardoned convict has violated, or failed to comply with, the condition or conditions of his pardon, to issue a rule reciting the original judgment of conviction, and the alleged violation of, or noncompliance with, the condition or conditions thereof, and requiring the sheriff to arrest the convict *and bring him before the court to*

> *show cause*, if any he can, why the original sentence imposed upon him should not be executed. A copy of such rule should be served upon the convict at the time of his arrest."

Similarly, in the case of *State* v. *Horne*, 52 Fla. 125, 42 So. 388, it was held that a prisoner was entitled to a hearing before having his constitutional pardon revoked. The court in that case said:

> "When a convict has been released upon a conditional pardon, his rearrest and recommitment to his original sentence cannot be had upon the mere order of the Governor alone, unless such a course is provided by statute, or by the express provisions of the pardon. The petitioner (*in the absence of statute or of express provisions in the pardon to the contrary*) is entitled to a hearing before the court having jurisdiction of the writ under which he is held, in order that he may show that he has performed the condition of the pardon, or that he has a legal excuse for not having done so, or that he is not the same person who was convicted."

Again, in *People ex rel. Joyce* v. *Strassheim*, 242 Ill. 359, 90 N. E. 118, on petition for writ of habeas corpus on the ground that no hearing had been had to ascertain whether the petitioner had violated his parole, it was held that the petitioner was entitled to a hearing. The court said:

> "Under the constitutional provision that he shall not be deprived of liberty without due process of law, he is entitled to a hearing before some authority as to whether he has violated the conditions of his parole and forfeited his rights under it."

In *People ex rel. Stumpf* v. *Craig*, 140 N. Y. Sup. 652, which arose on a petition for a writ of *habeas corpus*, it appeared that a paroled prisoner was summarily rearrested and imprisoned on a wrrant issued by a police officer, who was informed under oath that the probationer had violated his parole. The probationer was arrested without

notice and without any opportunity to be heard. The court, in holding that the revocation of parole without a hearing and subsequent commitment to jail was illegal, and calling for a release, said:

> "The defendant was there protesting his innocence and demanding his right to be heard. No hearing was accorded him, and he was summarily convicted of a violation of his parole without information as to when, where, or how it had been violated; nor does it appear that the police magistrate had knowledge of it. To send a person to prison because he has violated some condition which he insists he has not, and without specifying what it is, and without giving him an opportunity to be apprised of the condition and its violation, which is claimed to have occurred, and to be heard in his own behalf, violates elementary principles of criminal jurisprudence."

And in *N. Y.* v. *Kriegel*, 207 N. Y. Sup. 646, it was said, by way of *dictum*, that a revocation of probation without a hearing, resulting in a commitment, is illegal, and in *habeas corpus* proceedings would warrant a discharge.

The foregoing statements show conclusively that it is the consensus of opinion in the State courts that the right of every person to be heard when his life, liberty or property are involved is one which must be scrupulously guarded and that any proceeding in which he is denied this right is not due process of law.

Two.

At the time the petitioner was sentenced, to wit, on October 10, 1932, the law applicable was as follows (18 U. S. C. A., Sec. 725):

> "Powers of Probation Officers; Arrest of Probationer.—When directed by the court, the probation officer shall report to the court, with a statement of the conduct of the probationer while on probation. The court may thereupon discharge the probationer

from further supervision and may terminate the proceedings against him, or may extend the probation, as shall seem advisable."

"At any time within the probation period the probation officer may arrest the probationer without a warrant, or the court may issue a warrant for his arrest. *Thereupon such probationer shall forthwith be taken before the court.* At any time after the probation period, but within the maximum period for which the defendant might originally have been sentenced, the court may issue a warrant and cause the defendant to be arrested and brought before the court. Thereupon the court may revoke the probation or the suspension of sentence, and may impose any sentence which might originally have been imposed." (Mar. 4, 1925, c. 521, Sec. 2, 43 Stat. 1260.)

On June 16, 1933, the second paragraph of said Section 725 was amended to read as follows:

"At any time within the probation period the probation officer may arrest the probationer wherever found, without a warrant, or the court which has granted the probation may issue a warrant for his arrest, which warrant may be executed by either the probation officer or the United States Marshal of either the district in which the probationer was put on probation or of any district other than that in which the probationer shall be found and, if the probationer shall be so arrested in a district other than that in which he has been put on probation, any of said officers may *return probationer to the district out of which such warrant shall have been issued.*" (As amended June 16, 1933, c. 97, 48 Stat. 256.) (Italics ours.)

It is submitted that the above statute, as amended, requires that the probationer be brought before the court before revocation of his probation.

The purpose of the statute seems to be merely to enlarge the powers of the Marshal so that the probationer may be apprehended wherever found on warrant from the court

of the district in which probation was granted. Aside from this it continues the law as it was prior to the enactment of the statute by implication. To contend that the amendment was intended to entirely supersede the original statute is to contend that the legislature enacted a foolish amendment. If the last clause of the amendment is to be given effect it must be read in connection with the two clauses of the statute requiring that probationer be brought before the court. Properly construed, it states that "any" officer "may" return probationer, but some one of them *must* return him to the district whence issued the warrant so that he may make answer pursuant to the right granted him by the statute before amendment. It cannot reasonably be contended that the Congress passed a measure over one-third of which is surplusage. Yet such is the result if the amendment be interpreted as repealing completely the statute and not incorporating it by implication. The last clause of the amendment was obviously written with an eye to keeping the measure within the constitutional rule of "due process of law." Otherwise interpreted, it becomes a petty legislative intermeddling into the minor administrative acts of the Marshal.

The Circuit Court of Appeals (W. Va.) construing Sec. 725, in the case of *Hollandsworth* v. *United States*, specifically held that a court cannot revoke probation and sentence a probationer unless it appears, after notice and opportunity for hearing, that probationer failed to comply with the conditions of his probation. (34 F. (2d) 423.)

Petitioner believes that the Congress did not intend to dispense with this requirement when the amendment was enacted in 1933; but rather that it was expressly recognized and continued by force of the closing words of the amendment. He believes that the requirement of a hearing are to be fairly and logically inferred by its terms and thus is

within the statute as amended. (*Great Northern Ry. Co.* v. *United States*, 155 Fed. 945, 84 C. C. A. 93, aff. 208 U. S. 452, 28 Sup. Ct. 313; *United States* v. *Allen*, 179 Fed. 13, 103 C. C. A. 1.)

In construing a statute, the presumption is that the legislature intended to change the law as it theretofore existed only insofar as necessary to effectuate the purposes of the act in question. 3 Bl. Comm. 430. In the amendment under question the sole purpose of the Congress was to authorize arrest by any Marshal and return by him of the probationer to the district whence the warrant issued.

There is also a presumption that the Congress did not intend to enact a measure which is unconstitutional. *Ex parte Young*, 209 U. S. 123, 28 Sup. Ct. 441; *Cantwell* v. *Missouri*, 199 U. S. 602, 26 Sup. Ct. 749; *Smith* v. *St. Louis Ry. Co.*, 181 U. S. 248, 21 Sup. Ct. 603. It cannot be contended that the omission of the words "brought before the court" from the amendment was intended to dispense with the necessity of such a procedure, since this would be to hold that the Congress intended to violate the inhibitions of the Fifth Amendment to the Constitution, which is untenable.

It is to be presumed that the Congress never intends to do an injustice. Co. Litt. 183. It cannot be contended that the Congress intended to eliminate a hearing which is demanded by the most elementary principles of fairness and justice if not by organic law. It is the duty of the court to give effect to every word of a law, if possible. Yet the last clause of the amendment becomes meaningless and devoid of sense if it be held that Congress intended to dispense with a hearing when it enacted the amendment. The language used must be so construed that all words are given meaning. When the language used is elliptical, the words which are obviously necessary to complete the sense will be supplied. It is manifest that the words "for the

purpose of a hearing" are to be added to the last sentence of the amendment if it is to express the intent of the legislature.

It is always permissible to look to the context to discover the legislative intent. The statute and amendment under consideration are part of Title 18, United States Code, dealing with probation. The amendment requires that the probationer be brought back to the district where probation was granted when arrested on warrant by an officer outside the district. Why should he be returned? Obviously for but one purpose; that the question of his violation may be investigated *in his presence* by the court which granted his probation.

There is a presumption that the Congress did not intend to repeal Sec. 725, by repealing it entirely. To so hold would result in the startling situation of a court having power to arrest a probationer, but not revoke his probation, for the power to revoke probation is found in Sec. 725, but not in the amendment. The questionable logic which would exclude the necessity of a hearing since the amendment would likewise simultaneously withdraw from the court the power to revoke probation once granted, an absurd consequence and patently untenable.

The Congress cannot be presumed to have intended an innovation on the common law, and its enactments cannot be extended, in directions contrary to the common law, further than required by the express terms employed. Nothing contained in the amendment can be thought to show the congressional intent to change the common law requirement of a hearing in all cases where a man's liberty is in jeopardy.

Sec. 725, Title 18, United States Code, as amended, requires that the probationer be brought before the court. Failure to do so in the instant case renders the orders entered utterly void and without effect in law.

Three.

Petitioner believes that he is now illegally imprisoned in violation of the Constitutional requirement of due process and in violation of the statute.

Petitioner was committed to the penitentiary after granting of a motion of the probation officer to revoke his probation. He was not given an opportunity to pray for his original sentence of eighteen months; which he has now more than served. He was not given an opportunity to inquire into the reasons for the filing of the motion, which does not specifically recite them. Why was the motion filed? After nearly two years of diligent effort by himself, his mother and his friends, petitioner has yet to discover just wherein he is alleged to have violated the conditions of his probation. Is he to remain in perpetual ignorance of which of his acts were deemed to be sufficiently offensive to society to merit loss of his liberty for years? Can it be seriously contended that the American people intend that a mere administrative officer of the court was to be clothed with unquestioned authority to institute proceedings involving loss of liberty without cause shown or opportunity for impeachment? To reply affirmatively to either question is to shock the sense of justice which is one of our most cherished heritages.

Upon being admitted to the penitentiary, petitioner forwarded a motion to the District Court from which he was committed praying that he be given an opportunity to be heard in his defense and that he be apprised specifically of how he had violated his probation. This motion was returned to petitioner by letter signed by the Honorable Randolph Bryant which flatly refused to allow the motion to be filed. No comment was included.

Four.

Was *habeas corpus* available as a remedy to test the validity of the orders revoking petitioner's probation and

committing him to the penitentiary? In the court below appellee contended that a valid jurisdiction of both person and subject matter existed and the sentence was within that authorized and hence that the orders were open to attack only by appeal therefrom and not by *habeas corpus*. Petitioner denies that a proper jurisdiction of the person had attached in the premises and that as a result the orders were *coram non judice* and open to attack by *habeas corpus*.

The resolution of this difference involves the determination of what specifically amounts to a valid jurisdiction of the person. Petitioner maintains that custody and jurisdiction of the person are not synonymous; that something more than mere apprehension is necessary. Suppose, for example, that John Doe is served with the warrant. Has jurisdiction of the person of John Doe attached? Obviously not. Suppose further an order is now entered revoking Doe's probation and committing him. Doe is promptly hurried off to the penitentiary. How is Doe to challenge this order? The appellee below contends his remedy is by appeal. We then have the extraordinary anomaly of Doe admitting that he is Doe so that he can appeal, and denying that he is Doe in the appellate court! Or the equally amusing case of Doe denying that he is a party to the suit and seeking to carry it forward by appeal!

Petitioner believes that as a usual rule the person has not attached sufficiently to render an order valid until the party has appeared in open court and admitted that he is the party contemplated. He believes further that if the person should appear in court and deny his identity and therefore the court's jurisdiction that no jurisdiction would attach until he was judicially found to be the correct person.

Petitioner grants that potential jurisdiction of his person was present, but maintains that before active jurisdic-

tion could be got, it was necessary that he be brought into court, where he should thereupon be given an opportunity to be heard. If he sought to exonerate himself, jurisdiction would attach *ipso facto*. Likewise if he submitted, but if he thereupon challenged the jurisdiction of the court, it could not attach until the reasons for his challenge had been investigated.

It is manifest, therefore, that there is a jurisdictional question involved and that *habeas corpus* is a proper remedy. Petitioner does not seek a review of the exercise of a discretion; he denies that the power to exercise the discretion with reference to him existed at all. He does not maintain that the court abused a discretionary power and that this abuse should be remedied; he rather maintains that an order has been executed on him which was issued in a proceeding to which he was not a party and which was *coram non judice*, void and of no effect.

The District Court to which your petitioner directed his original petition for writ of *habeas corpus* is invested with statutory authority to grant the writ. Sec. 451, Title 25, U. S. C.

The courts have repeatedly held *habeas corpus* to be proper remedy to inquire into the legality of imprisonment where jurisdiction is wanting or a constitutional right has been invaded. *U. S.* v. *Harden*, 10 Fed. 802; *Ex parte Mikell*, 253 Fed. 817; *Yow* v. *U. S.*, 208 U. S. 8, 28 Sup. Ct. 201; *Craig* v. *Hecht*, 260 U. S. 714, 43 Sup. Ct. 90, and decree affirmed 263 U. S. 255, 44 Sup. Ct. 103.

Five.

In the above premises petitioner believes he should be discharged from further confinement. He has now been incarcerated beyond the length of his original sentence upon a commitment without legal foundation.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued under the seal of this Honorable Court directed to the United States Circuit Court of Appeals sitting at Denver, Colorado, commanding the said court to certify and send to this Court, on a day to be designated, a full and complete transcript of the record and all proceedings of the Circuit Court and District Court had in this case, to the end that said proceedings may be reviewed by this Court, and that upon a full examination of the record the judgment of the said Circuit Court be reversed, and for such other relief as to this Court shall seem proper.

JACK ESCOE,
Petitioner, Pro se.

In the United States Supreme Court of America, October Term, A. D. 1934.

STATE OF KANSAS,
County of Leavenworth, ss:

Before me on this day personally appeared Jack Escoe, petitioner in the foregoing petition addressed to the Supreme Court of the United States of America, who, being by me first duly sworn, deposes and says that the facts stated in the foregoing petition are true to the best of his knowledge and belief.

JACK ESCOE,
Affiant.

Sworn to and subscribed before me, a notary public, this 5th day of March, A. D. 1935.

[SEAL.] E. H. ECKHOLDT,
Notary Public.

My commission expires April 29, A. D. 1935.